

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT CREASY,	:	
	:	
Plaintiff	:	NO. 4:04-CV-2296
	:	(Judge McClure)
v.	:	
	:	
NOVELTY, INC.,	:	
	:	
Defendant	:	

O R D E R

April 25, 2005

BACKGROUND:

The court has before it defendant's motion to dismiss plaintiff's complaint, filed January 4, 2005, and plaintiff's motion to amend his complaint, filed March 12, 2005. It appears that defendant's motion to dismiss prompted plaintiff's motion to amend.

Fed.R.Civ.P. 15(a) begins as follows:

"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served"

Plaintiff appears to have ignored this initial portion of the rule and proceeded to file a motion for leave of court to file an amended complaint.

However, a motion to dismiss is not a “responsive pleading” within the meaning of Rule 15. Centifanti v. Nix, 865 F.2d 1422, 1431 n. 9 (3d Cir. 1989). Accordingly, plaintiff had an absolute right to amend the complaint at this stage of the proceeding.

The court will therefore grant the motion to amend and direct the filing of an amended complaint. The motion to dismiss thereby becomes moot.

If defendant wishes to file a motion to dismiss the amended complaint, it should file a new motion and new supporting brief but may incorporate by reference the exhibits attached to the initial motion to dismiss, to conserve resources. Defendant may, of course, supplement those exhibits to the extent deemed appropriate.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Plaintiff’s motion to amend plaintiff’s complaint (rec. doc. no. 16, filed March 12, 2005) is granted.
2. Plaintiff shall file an amended complaint on or before May 9, 2005.
3. Defendant’s motion to dismiss plaintiff’s complaint (rec. doc. no. 6,

filed January 4, 2005) is denied as moot. In briefing any subsequent motion to dismiss the amended complaint, the defendant may incorporate by reference the exhibits which were attached to the initial motion to dismiss and may attach supplemental exhibits.

s/James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge